UNITED
NATIONS

AT

Administrative Tribunal

Distr.
LIMITED

AT/DEC/603
29 June 1993

ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 603

Case No. 597: CHANTRE-CIRCU

Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Jerome Ackerman, President; Mr. Luis de Posadas Montero, Vice-President; Mr. Hubert Thierry;

Whereas at the request of Yvette Chantre-Circu, a former staff member of the United Nations, the President of the Tribunal, with the agreement of the Respondent, successively extended to 31 December 1990, 31 January, 28 February, 31 March and 30 May 1991, the time-limit for the filing of an application to the Tribunal;

Whereas, on 23 April 1991, the Applicant filed an application requesting the Tribunal to:

> "10. Declare as null and void the review of the Applicant's case by the New York General Service Classification Appeals and Review Committee (NYGSCARC) because of:
>
> (a) The lack of an audit of her post as mandated by ST/AI/301, paragraph 13;
>
> (b) The lack of a reasoned decision.
>
> 11. Order that the post Applicant occupied be reclassified at the P-2 level.
>
> 12. Alternatively, since the Applicant carried out work of a professional and administrative nature, order the classification of her post at the GS-7 level.

13. Alternatively, should the Secretary-General decide that Applicant should be compensated without further action being taken in her case, award her two year base salary according to paragraph 9 of the Statute of the Tribunal."

Whereas the Respondent filed his answer on 11 February 1992;

Whereas the Applicant filed written observations on 14 April 1992;

Whereas, on 29 October 1992, the Tribunal requested the Respondent to provide the Applicant "with the analysis by the Compensation and Classification Service referred to in each case as one of the elements considered by NYGSCARC in making its recommendations on the level of the posts";

Whereas, on the same date, the Tribunal put further questions to the Applicant and asked her "to advise the Tribunal whether there is any further information that ... she wishes to be considered, which deals exclusively with the above analysis and the nature of the duties and responsibilities of the post, as set forth in the job descriptions to which that analysis was directed";

Whereas, on 3 November 1992, the Respondent submitted to the Tribunal the documentation requested and the Applicant, on 9 November 1992, provided her comments thereon, together with replies to the questions put by the Tribunal;

Whereas, on 20 November 1992, the Executive Secretary of the Tribunal informed the parties that the Tribunal had decided to adjourn consideration of the case until its 1993 Spring session;

Whereas the facts in the case are as follows:

Yvette Chantre-Circu entered the service of the United Nations on 2 November 1961. She was granted a probationary appointment at the GS-2, step V level, as a Conference Typist in the Stenographic Service of the French Typing Unit. On 1 June 1962, she was promoted to the GS-3 level. On 1 November 1963, she was granted a permanent appointment. The Applicant was promoted to the GS-4 level, as a Conference Typist, with effect from 1 May 1967. Since February 1970,

the Applicant was successively transferred to various offices and eventually, on 19 July 1977, to the Department of Political Affairs, Trusteeship and Decolonization/Council for Namibia Section. On 1 April 1978, the Applicant was promoted to the G-5 level, as Administrative Assistant.

In July 1982, the International Civil Service Commission approved the establishment of a seven-level grading structure (to replace the old five-level structure) for the General Service category in New York and promulgated job classification standards for the seven levels. As a result, all General Service posts in New York were classified under procedures set out in administrative instruction ST/AI/301 of 10 March 1983.

In accordance with the administrative instruction, a description of the post encumbered by the Applicant was prepared for initial classification and submitted to the Classification Service in June 1984.

On 13 June 1984, the Assistant Secretary-General, Office of Personnel Services (OPS) announced to the staff, in information circular ST/IC/84/45, the establishment of the Classification Review Group "to review the overall results of the classification exercise currently being undertaken in respect of posts in the General Service and related categories in New York". As a result of the review, the Applicant's post was downgraded to the G-4 level.

On 28 April 1986, the Assistant Secretary-General, OPS, informed the staff, in information circular ST/IC/86/27, "of the action taken with respect to the classification exercise for posts in the General Service ... categories at United Nations Headquarters and to outline future action, in particular with respect to the implementation of the results of the exercise and the related appeals procedure." NYGSCARC was established with effect from 16 May 1986, to hear appeals against the results of the classification exercise.

The Applicant's appointment was terminated for reasons of health, in accordance with staff regulation 9.1(a), with effect from 29 January 1987.

In a Personnel Action Form dated 9 March 1987, the Applicant was informed that, with effect from 1 January 1985, her post had been classified at the GS-4 level.

In a memorandum dated 21 May 1987, the Applicant wrote to the Secretary-General, appealing the initial classification of her post. She argued, essentially, that "the duties and responsibilities that I assumed were going beyond what is requested of a GS-5. They were more the work of a professional...". She asked that her request by reconsidered "according to the functions [she] assumed".

As the Applicant had been on sick leave since late 1984, NYGSCARC reviewed the case on an exceptional basis. It confirmed classification of the post at the GS-4 level. The Assistant Secretary-General for the Office of Human Resources Management (OHRM[1]), approved this recommendation on 11 September 1989 and so informed the Applicant.

On 10 October 1989, the Applicant wrote to the Secretary-General, requesting that classification of her post "be reconsidered" since "the post appears to include elements of professional work". On 16 October 1989, she wrote a further letter to the Secretary-General, with supporting material, including a new job description. In a reply dated 20 November 1989, the Assistant Secretary-General, OHRM, informed the Applicant that since her "appeal and all materials submitted in conjunction with it were submitted to and reviewed by NYGSCARC...", his decision, "based on the recommendation of NYGSCARC, to establish the classification of the post at the GS-4 level is, therefore final."

On 21 December 1989, the Applicant informed the Executive Secretary of the Administrative Tribunal that she wished to appeal the classification of her post. On 21 February 1990, the Applicant requested from the Secretary-General, administrative review, under staff rule 111.2(a), of the classification of her post. On

---

[1] Successor of OPS.

16 March 1990, the Director, Staff Administration and Training Division, OHRM, informed the Applicant as follows:

> "I am pleased to inform you of the decision that the New York General Service Classification Appeals and Review Committee (NYGSCARC) will again review your case and communicate to you, and to the Office of Human Resources Management, its findings and recommendation. The Assistant Secretary-General for Human Resources Management will reconsider your case in the light of those findings and recommendation and inform you of the decision taken as a result."

NYGSCARC reviewed the appeal at its tenth meeting on 26 April 1990. Its findings and recommendation read as follows:

> "... Based upon its review of the job description, the information provided by the appellant in her memoranda of appeal and related attachments, the analysis provided by the Compensation and Classification Service which confirmed the classification decision, the Committee concluded that the functions of the post corresponded to the GS-4 level depicted in the General Service Classification Standards. Accordingly, the Committee recommends that the post be maintained at the GS-4 level."

In a letter dated 25 June 1990, the Assistant Secretary-General, OHRM, informed the Applicant that he had approved the recommendation by NYGSCARC that the post be maintained at the GS-4 level. He added that if she was "still dissatisfied with the decision taken after reviewing these findings, the Secretary-General will agree to the direct submission of your application to the Administrative Tribunal."

On 23 April 1991, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. NYGSCARC procedures violated the Applicant's due process rights and the established jurisprudence of the Tribunal.

2. The Respondent "unreasonably delayed" the Applicant's appeal before NYGSCARC, which resulted in injury to her.

3. The Respondent failed to perform a classification audit of the Applicant's post.

4. The Respondent incorrectly classified her post at the GS-4 level.

Whereas the Respondent's principal contention is:

The Respondent's discretionary decision with regard to the classification of the Applicant's post was properly taken following an independent review by a specialized appeals body.

The Tribunal, having deliberated from 7 June to 29 June 1993, now pronounces the following judgement:

I. The Applicant's post, which had been at the G-5 level, was reclassified at the GS-4 level, with effect from 1 January 1985. She was so notified on 9 March 1987. The Applicant appealed against this decision. After several reviews, the Respondent, following a recommendation by NYGSCARC, took a decision on 25 June 1990, to maintain the classification of the Applicant's post at the GS-4 level.

II. After receiving the consent of the Respondent to direct submission, the Applicant has now filed her appeal. In her initial submission, the Applicant challenged the administrative decision that classified her post at the GS-4 level, on the ground that it was not a reasoned decision and that it failed to take into consideration several circumstances that would have warranted a higher classification. In her written observations, the Applicant introduced a new plea and challenged the administrative decision on the additional ground of lack of due process.

III. This raises an issue common to other post classification cases now before the Tribunal. It is therefore appropriate for the Tribunal to address it.

The Tribunal notes, in this respect, that the procedure followed before NYGSCARC, did not fully meet the requirements of due process of law. In particular, the Tribunal finds that, through the failure to transmit to the Applicant the Compensation and Classification Service's report to NYGSCARC, on whose recommendation the Respondent relied, the Applicant was denied the possibility of having her say, before a final decision was reached. (Cf. Judgement No. 541, Ibarria). In order to remedy this flaw, the Tribunal requested the Respondent, on 5 November 1992, to provide the Applicant with the necessary documentation, thus affording her the opportunity to comment on it. The Applicant submitted her comments on 9 November 1992.

IV. If the Applicant had presented material new facts previously unknown to her or significant new arguments that she had not previously been able to submit, a remand of the case would have been necessary. However, as her submission contains no new facts or arguments with respect to the documentation transmitted to her, consisting merely of her assertion that these documents confirm the lack of valid reasons for classifying her post at the GS-4 level, the Tribunal holds that no remand is necessary.

V. Contrary to the Applicant's claim that the decision appealed was unreasoned, the documents produced show that the decision to classify the post at the GS-4 level was not arbitrary or unreasoned.

VI. The Tribunal has consistently held that it cannot substitute its judgement for that of the Respondent in job classification matters and that its task is to ascertain whether, under all the circumstances, the Respondent has acted within his reasonable discretion and due process has been observed. (Cf. Judgement No. 597, Colayco (1993), paras. II and V.)

The Tribunal notes that the Applicant was afforded the opportunity to submit the documentation she deemed necessary. The

Tribunal also finds that the procedural flaw referred to in paragraph III above, has not had any detrimental effect. Accordingly, the application should be dismissed.

VII. For the foregoing reasons, the application is rejected.

(Signatures)

Jerome ACKERMAN
President

Luis de POSADAS MONTERO
Vice-President

Hubert THIERRY
Member

Geneva, 29 June 1993

R. María VICIEN-MILBURN
Executive Secretary